S.B. Civil Writ Petition No.1292/02

25.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Som Dutt Sharma, Advocate for petitioner.
Mr. Gaurav Gupta, Advocate for respondent no.4.

This writ petition has been filed against the order dated 8.10.1997 passed by Panchayat Samiti Bayana and the order dated 24.12.2001 passed by Additional District Collector, Bharatpur. The petitioner was granted permission to raise construction on a piece of land which he claims to be his own by the Gram Panchayat vide order dated 1.10.94. The respondent no.4 Lakhi Ram challenged the said order before the Panchayat Samiti, Bayana by filing the appeal. The Panchayat Samiti allowed the appeal by order dated 8.7.1997. The petitioner then

filed revision petition before the Additional District Collector, Bharatpur who vide order dated 24.12.2001 rejected the same.

Heard Mr. Som Dutt Sharma, the learned counsel for the petitioner and Mr. Gaurav Gupta learned counsel for the respondent no.4.

Mr. Som Dutt Sharma argued that the land in dispute regarding which permission for construction was granted to the petitioner was his own and there was no legal error in the order dated 1.10.94. passed by the Gram Panchayat granting permission to raise the construciton. The findings recorded by the Panchayat Samiti as been upheld by the Additional Collector that the petitioner was not resident of Jaswant Nagar was not correct. The learned

authorities below have erred in law in not correctly appreciating the evidence and the documents on record in upholding the claim of the respondent. The impugned orders are therefore liable to be set aside.

On the other hand learned counsel for respondent no.4 submits that the writ petition is misconceived in as much as the order passed by the Panchayat Samiti and Additional Collector are legally justified. Not only that the petitioner was not resident of village Jaswant Nagar but the land for construction on which permission was granted to the petitioner in fact is owned by respondent no.4. The permission was granted by the Panchayat Samiti behind his back. The appellate authority as well as the revisional authority have rightly appreciated this

aspect of the matter. He further submits that subsequent to the passing of the impugned orders, the Gram Panchayat has by unanimous resolution dated 10.11.95 granted permission to the respondent no.4 for raising construction over the land in dispute. The land is in possession of the respondent no.4. He further submits that in any case the issues raised by the petitioner with regard to possession and title of the land are disputed questions of fact which cannot be entertained in the remedy of writ under Article 226 of the Constitution of India.

Having heard learned counsel for the parties I find that the Panchayat Samiti in the order dated 8.10.1997 has referred to the report of the inspection submitted by its standing committee. The members of the standing committee had

inspected the site and found that respondent no.4 was in possession of the land. The standing committee in its report has also noted that plaintiff was nowhere in possession of the land in dispute. On consideration of this factual aspect, the Panchayat Samiti cancelled the permission granted to the petitioner by Gram Panchayat for raising construction. The Additional Collector, Bharatpur in his order dated 24.12.2001 has also analyzed the material on record and the report of the standing committee. Now the permission for construction has been granted to respondent no.4 by the Gram Panchayat, which is a subsequent order and which has not been challenged by the petitioner in any forum known to law. Whether or not the respondent no.4 is in possession of the land or whether

the respondent no.4 or the petitioner is having title in the disputed land are all complex nature of factual disputes which cannot be appropriately gone into and adjudicated upon by this Court in writ jurisdiction. The petitioner, if he feels aggrieved by any of the actions of the respondent authorities may take his remedy before the appropriate Civil Court. However on examination of the order passed by the appellate authority and the revisional authority, I find that they do not suffer from legal error so as to warrant interference by this Court.

The writ petition is therefore dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-